

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SAN JOSE UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013120286

ORDER DENYING MOTION TO  
DISMISS

On December 2, 2013, the San Jose Unified School District (District) filed a due process hearing request (complaint) naming Student's parents on behalf of Student. The complaint seeks a determination from the Office of Administrative Hearings (OAH) regarding the appropriateness of the District's speech articulation assessment.

On December 26, 2013, Student's parents filed a request to dismiss the District's case. The request was made on an OAH form and stated the reason for dismissal as "Withdrawal of the case as the parties do not wish to proceed to hearing at the current time."

It is not clear from the document whether Student's parents served a copy of the request for dismissal on the District. There has been no response filed by the District to the request.

The form filed by Student's parents is used when a party seeks to withdraw a complaint which that party filed. Had Student's parents filed the complaint in the instant case, Student's parents could properly use the form. However, Student's parents did not file the complaint -- the District did. Therefore, only the District can withdraw the case.

It is possible that Student's parents filed the document because they no longer contest the District's assessment and no longer seek an independent educational evaluation. If so, Student's parents should contact the District to discuss settlement of the case. A request to withdraw signed by Student's parents is not the proper procedure to use under those circumstances.

ORDER

The motion to dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: January 2, 2014

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings